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April 6, 2022

VIA ECF

The Honorable Ona T. Wang
 United States Magistrate Judge
 United States District Court for the Southern District of New York
 Daniel Patrick Moynihan Courthouse
 500 Pearl Street
 New York, NY 10007

Re: *In re Application of Vale S.A. et al.*, No. 20-mc-199-JGK-OTW

Dear Judge Wang:

We write on behalf of Vale S.A., Vale Holdings B.V., and Vale International S.A. (collectively, “Vale”) to seek leave from the Court to segregate and preserve all documents produced and designated “Confidential” by Fine Arts NY LLC (“Fine Arts”) in the above-captioned proceeding (the “1782 Proceedings”) rather than destroy them at this time, given that these documents are presently the subject of a subpoena in a separate action in this District before Judge Broderick and Magistrate Judge Lehrburger captioned Vale S.A. v. BSG Resources Limited, No. 19-cv-3619 (VSB) (RWL) (the “NY Enforcement Proceedings”). Vale’s request with regard to documents produced by Fine Arts in the 1782 Proceedings is substantially similar to that made by us to the Court with regard to Perfectus on March 17, 2022 (ECF No. 139).

Under the terms of the Protective Order, ECF No. 69, Vale was required to “promptly (and in no event later than 30 days after entry of final judgment no longer subject to further appeal) return[] to the producing party or certif[y] as destroyed” all “Confidential Information and any copies thereof.” ECF No. 69 ¶ 12. On March 4, 2022, counsel for Fine Arts agreed to allow Vale to preserve (and have no obligation to destroy or return) the documents produced by Fine Arts in the 1782 Proceedings until March 31, 2022 so as to allow Fine Arts time to consider

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Vale's proposal for use of the documents in the NY Enforcement Proceedings. Fine Arts committed to revert back with an answer by Monday, March 7, 2022, or as soon as possible that week.

Vale followed up with Fine Arts with requests for a response to the proposal on March 8, March 15, March 21, March 28, and multiple times on March 29, all of which Fine Arts ignored. After several more attempts on March 30, Vale informed Fine Arts that absent agreement, it would need to serve a subpoena in the NY Enforcement Proceedings for these same documents. Counsel for Fine Arts then responded that they "d[id] not have instruction from Fine Arts and [were] not authorized to accept any subpoena at this point in time." Vale sent a copy of the subpoena to Fine Arts' counsel on March 30 (who did not agree to accept service on Fine Arts' behalf), and served Fine Arts the next day. See Exhibit A, Aff. of Deborah LaPointe, Apr. 1, 2022.¹ Having waited nearly a month without receiving the long-promised response from Fine Arts, we asked Fine Arts to at least agree to a further extension to resolve the issue amicably. Fine Arts agreed to an extension until April 6, but rejected Vale's request for a further extension.

As with the subpoena served on Perfectus, the subpoena Vale served on Fine Arts seeks the exact same documents that Vale requested from Fine Arts in the 1782 Proceedings. These documents produced by Fine Arts are relevant in identifying New York real estate assets held directly or indirectly by BSG Resources Limited, its related entities and/or Benjamin Steinmetz that may be subject to execution through the NY Enforcement Proceedings.

Vale similarly seeks leave to retain the documents produced and designated as confidential by Fine Arts in a segregated format such that they are inaccessible to Vale's counsel.² Vale and its counsel will have no ability to access the documents unless and until either Fine Arts grants Vale permission to use the documents in the NY Enforcement Proceedings or the court in the NY Enforcement Proceedings orders their production. This approach will minimize costs for all parties in the event that Fine Arts grants permission or the court in the NY Enforcement Proceedings orders production, and ensures that the documents will not be lost forever if Fine Arts has not retained them. In the interim, Vale and its counsel will have no access to the documents.

¹ Vale did not serve Fine Arts with the subpoena earlier because Vale believed the parties would be able to resolve this issue amicably without needing to resort to the Court's intervention, as has been achieved with most other subpoena recipients.

² Fine Arts designated every document in its productions as confidential. The documents will be kept in a locked folder within Vale's document database that is only accessible by Cleary Gottlieb's technology practice support group.

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Thank you for the Court's consideration.

Respectfully submitted,

/s/ Jeffrey A. Rosenthal

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cc: All counsel of record

The Honorable Robert W. Lehrburger